1949.

File No. O. Trusts /49

Legal Deptt.

A **BRANCH**

K

Subject:— Opinions under the Indian Trusts Act, 1882.

File No. O. Trusts /49

41-11

C O N T E N T S.

Legal Department File No. O. Trusts/49.

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Rele. M.S.

7/6

L.D.R.I. No. 12588dt. 8-10-48.

Submitted.

By G.R., Education and Industries Department, No. 8011, dated the 31st July 1948, Govt. have decided to close down Govt. Anglo-Urdu High Schools with effect from 28th February 1949. It has also been decided to transfer the schools to responsible private bodies, if any would come forward to run them. The question in these papers is whether the Anglo-Urdu High School at Poona can be transferred to a private body in accordance with the decision of Govt.

The buildings of this High School have been constructed mainly from the 5 per cent. Govt. Securities of the face value of Rs. 1,80,000 received as a donation from the Ajam Trust Fund under an Order of the High Court, Bombay in suit No. 1065 of 1927. A donation of Rs. 20,000 was also received from the David Sassoon Trust Fund and it was also utilised for the construction of the Hostel building. It is stated that a sum of Rs. 24,182 from the donation from the Ajam Trust is lying as balance in the hands of Govt. It is proposed to transfer the school, the buildings and the balance in hand to a private society willing to run the school. The R.L.A. is requested to advise whether such transfer is possible. (Vide pages 19-23 ante).

Office of the R. L. A.

The transfer of the school building and the balance of Rs.24182 to a private responsible body can be made by Government only with the sanction of the Court. There would be no objection to transferring the hostel building to such body if no condition about the management was attached to the donation received from the David Sassoon Trust Fund.

M/.

Remembrancer of Legal Affairs

U.R. to E.& I.D., No. 894, dated the 25th January 1949.

Pl. See R.L.A's No. 4407 dt. 22-4-49, and No. 7907 dt. 14-7-49.

Legal Department.

By a Judge's order dated the 18th April 1932 made in Suit No. 1066 of 1927 (Haji Gulam Mahomed Ajam v. The Advocate General of Bombay and another) 5 per cent . Govt. securities of the face value of Rs. 1,80,000 were ordered to be delivered to the Director of Public Instruction, Bombay Presidency, on behalf of the Govt. of Bombay as a donation in the name of one Haji Gulam Mahomed Ajam on condition that the said amount should be utilised towards the purchase of land for the Anglo-Urdu High School at Poona and erecting thereon either the main school building or any hostel or other building appurtenant thereto and that the balance, if any, should be utilised for other capital purposes connected with the said school and a substantial building connected with the said school should be called after the said Haji Gulam Mahomed Ajam.

Pursuant to the said order, the said securities were handed over to the Director of Public Instruction and the same were expended in the purchase of land and the construction of a school building as provided in the said order, leaving a balance of Rs. 24,182 in the hands of Govt.

By G.R., E.& I.D., No. 8011 dated the 31st July 1948 Govt. has decided to close down the said Govt. Anglo-Urdu High School with effect from the 28th February 1949 and to transfer the school building and the said fund to a responsible private body for running the same. R.L.A. advised that the transfer of the school building and the balance of Rs. 24,182 to a private responsible body can be made by Govt. only with the sanction of the court. R.L.A. now desires the Advocate General to state whether he would be willing to file a suit for obtaining the necessary sanction.

R.L.A's advice is based on the ground that Govt. is a trustee for carrying out the trust created by the Judge's order. Since it is not usual for the Advocate General, who represents the beneficiaries, to apply for directions which the trustees desire to have in connection with the administration of the trust, the Advocate General may kindly state whether he is prepared to do so in this case. Further for obtaining such directions a suit under section 92 of the Civil Procedure Code is not the only remedy and it is possible for Govt. to apply by a petition under section 7 of the Charitable and Religious Trusts Act, 1920, to the court within the local limits of whose jurisdiction the subject-matter of the trust is situate for the ~~in~~ opinion, advice or direction of the court on any question affecting the management and administration of the trust property.

IG/-

17/3

Solicitor to Government

U.O. to the Advocate General, Bombay, No. 3023 dated the 17th March 1949.

No. 6 of 1949.

Advocate General's Chambers,
High Court,
Bombay, 13th April 1949

U.O. R. to the Advocate General of Bombay,
No. 3023 dated the 17th of March 1949.

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O p i n i o n.

The Province of Bombay holds the land and building of the Anglo-Urdu High School at Poona for the purpose of use as an Anglo-Urdu School. There is, however, no obligation on Government to carry on such school. Accordingly, if the Government does not wish to carry on such a school, it will have to transfer the building and the land to a responsible private body as is proposed for running it.

It is not usual for the Advocate General to make any application to the Court in such a matter, but it is for the trustee or trustees to do so. It may be done by way of a petition under the Charitable and Religious Trusts Act on notice being given of the application to the Advocate General.

Sd/-
13/4/49.
Advocate General.

Legal Department.

The Education and Industries Department may direct the Director of Public Instruction, Poona to prefer an application to the District Court, Poona, under section 7 of the Charitable and Religious Trusts Act, 1920. As regards procedure to be followed attention is invited to Rule 172 of the Law Officers Rules.

Id/-
For Secretary to Government.

U. M. to E. & I. Deptt. No. 4407 dated the 22nd April 1949.

Office of the R. L. A.

Superintendence and management of estate by an executive order of the Maharaja of Rajpipla - Sanction for loan -

Indian Trusts Act, 1882. Section 94.

The sanad granting the estate to the Kumar with a limited right of disposal relates to the real estate and the restriction on disposal would not probably extend to the revenue or income thereof.

Since the estate of the Kumar was taken by the Rajpipla State under its management by an executive order, until the management is regularised under the laws as now applied to the State, the estate would be deemed to be held for the benefit of the Kumar under section 94 of the Indian Trusts Act, 1882; and if the Kumar is competent to contract, and it appears he is, there would be no legal objection to allowing him to withdraw Rs. 10,000/- from his personal deposit account. To treat such payment as a loan would be anomalous when there is sufficient balance standing to Kumar's credit in that account.

Sd/-

17/6

Remembrancer of Legal Affairs.

U.R. to R.D., No. 6768, dated the 18th June 1949.

R.L. No. 2140 dt. 20-6-1949.

Sumitted:

2. By. G. R. E. & I. D. No. 8011, dated the 31st July 1948 Government has decided to close down Government Anglo-Urdu High School, Poona and to transfer the School to responsible private bodies, if any would come fesward to run it. This school it appears has an attached hostel for students erected out of a grant received from Sir Sassoon David Trust Fund. On a reference to the R.L.A. in his opinion No. 894 dated 25 January 1949 he observed:

"The transfer of the School building and the balance of Rs. 24,182 to a private responsible body can be made by Government only with the sanction of court. There would be no objection to transferring the Hostel building to such body if no condition about the management was attached to the donation received from the David Sassoon Trust Fund."

The D.E.I. has in his letter dated 3/5/1949 pointed out that the hostel was constructed out of a grant of Rs. 20,000/- received from the said Fund and that the grant is subject to the Scheme of the Fund published in G.N.E.D. No.934 dated 10-4-1912.

Before the Hostel building is transferred to a private body he has requested Government to examine the legal implications thereof particularly with reference to condition No.6(ii) (a) of the said Scheme which provides that such hostels shall be managed by Government at their full and unfettered discretion.

The R.L.A. is requested to examine the point. Sd/s. 22/6.

Office of the R. L. A.

Clause 6(ii) (a) of the Scheme provides that the hostels when built are to become the property of Government and to be managed by Government in its full and unfettered discretion. If the word "managed" is taken with hostel, it is possible to contend that Government had undertaken the liability to manage the hostels although at its full and unfettered discretion.

2. Since an application is being made in connection with the transfer of the school building, it would be safer, in view of the possibility of the contention described above, to seek the Courts directions regarding the hostel also.

Id/-
13/7
Remembrancer of Legal Affairs.

U.R. to E. & I.D., No. 7907, dated the 14th July 1949.

No. 6505
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 18th June 1949.

From

P.N. Lad, Esquire, I.C.S.,
Secretary to Government and
Remembrancer of Legal Affairs.

To

The Official Trustee, Bombay.

Subject :- Trust S.S. Murat.

Sir,

With reference to your letter No.966, dated the 29th March 1949, on the above subject, I have the honour to observe as follows :-

Reading section 7 of the Official Trustees Act, 1913 with section 20 and 40 of the Indian Trusts Act, 1882 it will be clear that there would be no legal objection to the Official Trustee selling the Indian Securities and investing the the sale proceeds in British Securities as desired by the beneficiary; for, even after the Independence of India such securities continue to be authorised securities. The British Securities which are now held by the Official Trustee may continue; but the Australian Government Securities which are not covered by section 20 of the Indian Trusts Act will have to be converted into British Securities. There is no legal objection to depositing all the securities with the London Branch of the Reserve Bank of India, since the Official Trustee will still continue to have control.

The copy of the Trust Deed and the correspondence accompanying your letter under reference are sent herewith.

Yours faithfully,

Id/-
18/6

Remembrancer of Legal Affairs.

R.I. No. 14979, dated 12-9-49.

Submitted.

The Collector of Banas Kantha District in his letter at page 1 ante states that the management over the Ladav estate in Tharad Taluka, which was taken under the management by the Karbhari's order No. 766, dated 21-6-1921, on account of the minority of the heir and debts, may be withdrawn as the heir has now attained majority and the balance on hand is Rs. 2440-12-0 while the debt to be paid by the estate amounts to Rs. 2220-7-9. It appears that the original papers underlying the assumption of management could not be traced but a copy of the order which is an extract from the Baharinshi of 1921 is among the papers. The Revenue Department states that as the estate was taken under management by an executive order there is no necessity to notify the withdrawal in the B.G.G. Draft orders at p.19 ante are shown to the R.L.A. before issue. P.& S.D. has seen and passed on the papers to the R.L.A.

Id/-
26/9.

Office of the R. L. A.

Withdrawal of superintendence over the estate taken over by the Ruler by an executive order.
Indian Trust Act, 1882.
sec.56.

The view taken by the Revenue Department in para.2 of its note at page 17 ante is correct. A mere executive order transferring the estate to the ward would be sufficient.

Sd/-
28/9
Remembrancer of Legal Affairs.

U.O.R. to R.D., No. 10981, dated the 30th Sept.49.